

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

ERIC T. TOLEN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 4:10 CV 2031 RWS NAB
	)	
DAVE DORMIRE,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER**

This matter is before me on a Report and Recommendation to deny Petitioner Eric Tolen's Motion for Summary Judgment in this Section 2254 habeas corpus action.

This matter has been referred to United States Magistrate Judge Nannette A. Baker for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1). Judge Baker issued a Report and Recommendation on November 16, 2011 that recommended Petitioner's Motion for Summary Judgment be denied. Judge Baker acknowledged that a party may technically file a motion for summary judgment in a habeas proceeding. However, she reasoned that, in this case, the motion should be denied because it merely re-alleges the same grounds for relief alleged in Petitioner's original habeas corpus petition. Petitioner's habeas petition is currently pending before Judge Baker.

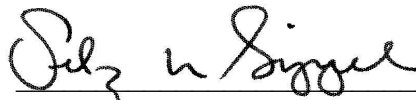
Petitioner filed an Objection to the Recommendation on November 28, 2011 [#32] and Supplemental Authorities in Support of his Objection on December 1, 2011 [#33], essentially arguing that I should not adopt the Recommendation because Judge Baker failed to adjudicate the

merits of his claims as required by Federal Rule of Civil Procedure 56 and within the spirit of Federal Rule of Civil Procedure 1.

After carefully considering the record before me, I adopt Judge Baker's Report and Recommendation because Petitioner's Motion for Summary Judgment re-asserts the same grounds for relief alleged in his habeas corpus petition. Petitioner's habeas corpus petition has been fully briefed and will be addressed by Judge Baker in due course. Judge Baker's consideration of duplicative motions asserting the same grounds for relief for the same remedy will not serve Rule 1's requirement "to secure the just, speedy, and inexpensive determination" of Petitioner's claims.

Accordingly,

**IS HEREBY ORDERED** that the Report and Recommendation of the United States Magistrate Judge Baker is **SUSTAINED, ADOPTED AND INCORPORATED** herein. Petitioner's Motion for Summary Judgment [#28] is **DENIED without prejudice**.

  
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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 12th day of December, 2011.